



LAWS OF ALASKA

1969

Source

Chapter No.

SCSCSHE 127

109

AN ACT

Creating a public defender agency; and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 18 is amended by adding a new chapter to read:

CHAPTER 85. PUBLIC DEFENDER AGENCY.

Sec. 18.85.010. PUBLIC DEFENDER AGENCY ESTABLISHED. There is created in the Office of the Governor a public defender agency to serve the needs of indigent defendants.

Sec. 18.85.020. ADMINISTRATION. The agency is administered by the public defender.

Sec. 18.85.030. APPOINTMENT AND TERM. The governor shall appoint the public defender from among two or more persons nominated for that position by the judicial council. The appointment is subject to confirmation by a majority of the members of the legislature in joint session. The public defender shall serve a term of four years. If the governor decides to retain the public defender for another term he need not call for nominations from the judicial council; however, the retention must be approved by a majority of the members of the legislature in joint session.

Sec. 18.85.040. REMOVAL. The public defender is subject to removal by the governor for good cause. If the public defender is removed, the governor shall submit to the legislature a report stating the reasons for his removal. The report shall be submitted within 10 days after the action has been taken if the legislature is in session, or if the legislature is not in session, within 10 days after the convening of the next regular or special session.

Sec. 18.85.050. VACANCY. If the position of public defender should become vacant for any reason, the governor may appoint an acting public defender to serve until the regular appointment procedures under sec. 30 of this chapter are complied with. The governor and the judicial council shall act under sec. 30 of this chapter as soon as possible after the vacancy occurs. A person appointed under that section to fill a vacancy begins a new four-year term.

Sec. 18.85.060. ELIGIBILITY. A person is not eligible to be the public defender or an assistant public defender unless he is admitted to the practice of law in this state or, with the approval of the Board of Governors of the Alaska Bar Association, in another state.

Sec. 18.85.070. PRIVATE PRACTICE PROHIBITED. The public defender and assistant public defenders shall devote all of their time to the duties of their respective offices and may not engage in the practice of law except in their official capacities in the agency.

Sec. 18.85.080. DELEGATION OF FUNCTIONS. The public defender may assign the functions vested in him or in the agency to subordinate attorneys and employees.

Sec. 18.85.090. AGENCY STAFF. The public defender may appoint and remove assistant public defenders, clerks, investigators, stenographers and other employees he considers necessary to enable him to carry out his responsibilities, subject to existing appropriations. Each person appointed to a subordinate position established by the public defender is under his supervision and control.

Sec. 18.85.100. RIGHT TO REPRESENTATION, SERVICES AND FACILITIES. (a) An indigent person who is being detained by a law enforcement officer in connection with a serious crime, or is under formal charge of having committed, or is being detained under a conviction of a serious crime, or is on probation or parole, or is entitled to representation under the Supreme Court Rules of Juvenile Procedure, or against whom commitment proceedings for mental illness have been initiated is entitled

(1) to be represented by an attorney to the same extent as a person having his own attorney is entitled; and

(2) to be provided with the necessary services and facilities of this representation, including investigation and other preparation.

(b) The attorney services and facilities and the court costs shall be provided at public expense to the extent that the person, at the time the agency or court determines indigency, is unable to provide for payment without undue hardship.

Sec. 18.85.110. NOTICE AND PROVISION FOR REPRESENTATION. (a) If a person having a right to representation under sec. 100 of this chapter is not represented by an attorney, the law enforcement officers concerned upon

commencement of detention, or the agency, or the court, as the case may be, shall

(1) clearly inform him of the right of an indigent person to be represented by an attorney at public expense; and

(2) if the person detained or charged does not have an attorney, notify the agency or the court, as appropriate, that he is not so represented.

(b) In (a) of this section "commencement of detention" includes the taking into custody of a probationer or parolee.

(c) Upon commencement of a later judicial proceeding relating to the same matter, the court shall clearly inform the person detained or charged of the right of an indigent person to be represented by an attorney at public expense.

(d) If a court determines that the person is entitled to be represented by an attorney at public expense, it shall promptly notify the agency or assign a private attorney for him under sec. 130 of this chapter.

(e) Upon notification or assignment under this section, the agency or assigned private attorney shall represent the person with respect to whom the notification or assignment is made.

(f) If the agency, before consideration by the court, determines that the person is entitled to be represented by an attorney at public expense, it shall promptly undertake his representation.

Sec. 18.85.120. DETERMINATION OF INDIGENCY. (a) The determination of a person's indigency shall be made by the agency or by the court in which an action against him is pending. When it is made by the agency it is subject to review by the court.

(b) In determining whether a person is indigent and in determining the extent of his inability to pay, the agency or the court shall consider such factors as income, property owned, outstanding obligations, and the number and ages of his dependents. Release on bail does not preclude a finding that a person is indigent. In each case, the person, subject to the penalties for perjury, shall certify under oath, and in writing or by other record, material factors relative to his ability to pay which the court prescribes.

(c) To the extent that a person is able to provide for an attorney, the other necessary services and facilities of representation, and court costs, the court may order him to pay for these items, which payments shall be paid into the state general fund.

(d) As a condition of receiving services under this chapter, a person shall execute a general waiver authorizing the release to the public defender of income

information regarding any income source the person has had for a period of three years immediately preceding his first court appearance in connection with each cause and for a period in the future of not less than three years after the last date aid is rendered under this chapter. At the conclusion of all services by the public defender to the person, the public defender shall release to the attorney general all information received under this subsection except information that might incriminate or tend to incriminate the person.

Sec. 18.85.130. SUBSTITUTE DEFENDER. (a) For cause, the court may, on its own motion or upon the application of the public defender, appoint an attorney other than the public defender to represent the indigent person at any stage of the proceedings or on appeal. The attorney shall be awarded reasonable compensation based upon the standard minimum bar fees for the area in which he regularly practices law and reimbursement for expenses necessarily incurred. This shall be paid by the agency.

(b) In addition to substitution under (a) of this section, when the public interest requires, and a person is entitled to representation by the agency under this chapter, the public defender may contract with one or more private attorneys to assist him. The public defender shall pay for these services out of appropriations to the agency.

Sec. 18.85.140. WAIVER. A person who has been appropriately informed under sec. 100 of this chapter may waive in writing, or by other record, any right provided by this chapter, if the court concerned, at the time of or after waiver, finds of record that the person has acted with full awareness of his rights and of the consequences of a waiver. The court shall consider such factors as the person's age, education, familiarity with the English language and the complexity of the crime involved in making the finding.

Sec. 18.85.150. RECOVERY FROM DEFENDANT. (a) A person who has received assistance under this chapter shall pay the state for the assistance if

(1) he was not entitled to it; or

(2) within three years after the conclusion of the proceeding for which he received the assistance he is financially able to do so according to the standard of ability to pay applicable under this chapter.

(b) The attorney general may bring an action on behalf of the state to recover payment from a person described in (a) of this section who refuses to make the payment. The action shall be brought within six years after the conclusion of the proceeding for which the assistance was provided.

(c) A person receiving assistance under this chapter shall be advised in writing of his financial responsibilities under this section, and shall, at the conclusion of that assistance, be advised in writing of the full

value of the services rendered, as determined by the public defender.

(d) Amounts recovered under this section shall be paid into the state general fund.

Sec. 18.85.160. RECORDS AND REPORTS. (a) The public defender shall keep appropriate records respecting each needy person represented by the agency under this chapter.

(b) The public defender shall submit an annual report to the legislature and supreme court showing the number of persons represented under this chapter, the crimes involved, the outcome of each case, and the expenditures (totalled by kind) made in carrying out the responsibilities imposed on the agency by this chapter.

Sec. 18.85.170. DEFINITIONS. In this chapter

(1) "agency" means the public defender agency created by sec. 10 of this chapter;

(2) "detain" means to have in custody or otherwise deprive of freedom of action;

(3) "expenses", when used with reference to representation under this chapter, includes an expense of investigation, other preparation, and trial;

(4) "indigent person" means a person who, at the time his need is determined, does not have sufficient assets, credit, or other means to provide for payment of an attorney and all other necessary expenses of representation without depriving the party or his dependents of food, clothing or shelter and who has not disposed of any assets since the commission of the offense with the intent or for the purpose of making himself eligible for assistance under this chapter;

(5) "serious crime" includes

(A) a criminal matter in which a person is entitled to representation by an attorney under the Constitution of the State of Alaska or the United States Constitution;

(B) an act that, but for the age of the person involved, would otherwise be a serious crime.

Sec. 18.85.180. SHORT TITLE. This chapter may be cited as the Public Defender Act.

* Sec. 2. AS 39.25.120(5) is amended to read:

(5) all employees of the office of the governor and the secretary of state, including the staff of the governor's mansion and the attorney members of the staff of the public defender agency, but not including the nonattorney members of the staff of that agency;

* Sec. 3. This Act takes effect July 1, 1969.